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D.B. CIVIL SPECIAL APPEAL (WRIT) NO.645/99
(Surendra Singh & Ors. Vs. State of Raj. &Ors.)

Date:- 19.04.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. BHANWAROO KHAN,J.

Mr.S.N.Trivedi, for the appellant.
Mr. L.R.Upadhyay, Addl. G.A.

Heard learned counsel for the appellants.

The appellants have filed SBCWP No. 1118/99 seeking a mandamus to the respondents that appellants' case may be considered by the DPC for regular promotion for the post of Head Master, Group 'F' in Secondary School against the vacancies advertised in the year 1989-90 and on being found suitable, they may be deployed as regular Head Master with effect from the date of the entitlement with all consequential benefits including terminal benefits.

All the appellants had been initially appointed as Teacher Grade-II in the Year between 1960-62 and they had been promoted in the Year 1979-80. All the appellants had been promoted on ad hoc/temporary basis as Head Master for the Secondary School, after 31.8.88 but before 6.9.90. All

the appellants had retired before holding DPC for regular promotion which took place in the year 1995-96.

The grievance of the appellants is that in the list of promotees for the post of Head Master in Secondary School against the vacancies advertised in the year 1989-90 their names were not found but persons who were junior to them and were only Grade-II teachers, have been promoted for the post of Head Master in Secondary School on regular basis. This post falls in cadre of Group 'F' of Schedule-I appended to the Rajasthan Educational Services Rule, 1970. The substantive post held by the appellants continued to remain as teachers Grade-I until 31.8.88 in subordinate service, relevance of which we shall personally notice.

Until the amendment in the Rajasthan Educational Services Rules, 1970 took place vide notification No. G.S.R.16 dated 6.9.1990 published in Rajasthan Gazette extra ordinary dated 17.9.90, the post of teachers Grade-I was encadred in the Rajasthan Educational Subordinate Service Rules, 1971 and was one of the feeder post for promotion to the aforesaid Group 'F' of Schedule-I under the Rules of 1970 as Head Master of Secondary School. Thus, until the amendment came into force, the post of teacher

Grade-I was under the Subordinate Services and persons holding that post were junior to persons holding the post of Head Master Secondary School under the State Services.

The aforesaid amendment dated 6.9.90 has came into force w.e.f. 1.9.88 with retrospective effect. Amongst other amendment, by this amendment the post of teacher Grade-I i.e. Lecturer of School Education was encadred in the Rules of 1970, as a part of State Services and the same was deleted from the Subordinate Services Rules 1971. As a result of this transposition, the post of teachers Grade-I i.e. Lecturer of School Education ceased to be a feeder post for promotion to the post of Head Master Secondary School w.e.f. 1.9.88. In other words, those teachers who were substantively holding the post of Teachers Grade-I as on 31.8.88 w.e.f. 1.9.88 became the members of the State Services and ceased to the eligible for the promotion for the post of Head Master Secondary School , which became an equivalent post with same pay scale.

From the facts notices above, it is apparent that as on the 1.9.88 all the appellants were substantively holding the post of teacher Grade-I or Lecturer in Secondary School Education and had became member of State Service. For

promotion to the post of Head Master Secondary School it has ceased to be a feeder post for vacancies occuring thereafter.

After the decision of this Court in D.B.C.W.P. No. 5562/90 decided on 7.10.91 upholding the validity of the amendment in the rules notified on 6.9.90, in view of the aforesaid clear position, apparently the appellants are not entitled for relief claimed by them, that they may be considered and appointed on the post of Head Master Secondary School on regular basis against the vacancy of advertised in the Year 1989-90 which occurred after 1.9.88.

However, it is also not in dispute that the appellants had all retired while holding the post of Head Master albeit on ad hoc/temporary basis. If that be so the appellants were entitled to get retiral benefits on the basis of emoluments which were drawn by them while holding the post of Head Master Secondary School as on the date of retirement. That become their vested right and cannot be affected because of their subsequently not finding place amongst the regularly selected candidates for the post of Head Master Secondary School.

In this connection, it may not out of place to notice entry 1 of Group 'E' post namely the Head Master Higher Secondary School for boys which was next promotion post for the Head Master Secondary School for boys also stood amended from 1.9.88, and note appended therto which reads as under:

1	*2*	*3*	*4*	*5*	*6*	*7*
[1(a)]	Headmaster, Higher Sec. School for boys	[50% by promotion from Head Master, Secondary School and 50% by promotion from Lecturer School Education]	Group'E'	Group'F' posts.	Master's degree in addition to qualifications prescribed for Headmasters	-

[Note- This method of recruitment by promotion will come into force only after the regularly appointed candidates on the post of Headmasters, Secondary School and equivalent posts upto 31.8.88 are regularly selected and appointed against the future vacancies of Headmaster's, Higher Secondary Schools.]

The note appended to the aforesaid entry postulates with those persons who were holding the post of Head Master Secondary School on regular basis on 31.8.88 and those who were holding the equivalent post that is to say Teachers Grade-I as on the date as per the amended Rules

will be first considered in that order against the future vacancies for Head Master Higher Secondary School, and it is also envisaged that only after exhausting the candidates from amongst the regularly appointed Head Master in Secondary School and Lecturer School Education as on 31.8.88 that the rotational Rule for giving promotion to Head Master Secondary School and Lecturer School Education, which both became feeder post for Head Master, Higher Secondary School, would come into force. This amply safeguards the interest of those persons whose posts were up-graded without their being put in the feeder channel for promotion to the next higher post of the unamended Rules.

Subject to the aforesaid observations about safeguarding the interest of the appellants to their retiral benefits on the basis of their last drawn emoluments from the post of Head Master, the appeal fails and is hereby dismissed.

No costs.

(BHANWAROO KHAN),J. **(RAJESH BALIA),J.**

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